IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUIT NO. 3970 OF 1996

Maharashtra State Road
Transport Corporation ..Plaintiff.

Vs.

M/s. Mahavir Petrochem Pvt. Ltd. ..Defendant.

....

Mr. G.S. Hegde for the Plaintiff.
None for the Defendant.

....

CORAM: **DR. D.Y. CHANDRACHUD, J.**

16th July, 2007.

P.C. :

1. The suit has been instituted for the recovery of a principal sum of Rs.4,33,113/- together with interest.

2. The Plaintiff entered into a rate contract (173 of 1993-94) with the Defendant for the supply of Tricholoroethylene. The material supplied by the Defendant was subjected to joint inspection on 21st and 22nd November, 1993 and thereafter on 28th November, 1993 and was found to be substandard. The Defendant sent another consignment which was again found to be

of substandard quality. The Plaintiff called upon the Defendant and rejected the material which the Defendant failed to lift. The Defendant similarly failed to supply replacements.

3. On 11th June, 1994 the Plaintiff invoked the risk purchase clause of the rate contract.

4. The Defendants have been served with the Writ of Summons, but have not entered appearance. In support of the claim in the suit the Plaintiff has relied upon the examination-in-chief of the Assistant Store Officer. The expenses incurred by the Plaintiff in carrying out the risk purchase have been computed at Rs.4,33,113/-. This represents the amounts which the Plaintiff had to pay for purchasing the material contracted for from the open market over and above the contractual rate.

5. A compilation of the original documents on the basis of which the claim in the suit is established, is tendered and taken on the record. The Defendants having failed to enter appearance

despite service of the writ of summons, the claim in the Suit has gone unchallenged. The claim has been duly established on the documentary and oral evidence on the record. The Suit shall accordingly stand decreed in the principal sum of Rs.4,33,113/-. The Plaintiff would be entitled to interest thereon at the rate of 12% per annum from the date of the risk purchase until the date of institution of the Suit and at the same rate from the date of institution until realization. The Plaintiff will be entitled to costs of the suit.